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Ontario Labour Relations Board HIGHLIGHTS

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NOTICES TO THE COMMUNITY

Information Bulletin No. 32: Open Period (Construction)
The Board describes its processes for displacement and termination applications for the upcoming open period in construction (attached)

Holiday Season Board Schedule
The Board's holiday operations schedule is attached.

Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in November of this year. These decisions will appear in the November/December issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Construction Industry Grievance – Damages – In considering these grievances in the wake of a sector determination which found that Avery had incorrectly assigned work under Civil, rather than ICI Agreements, the Board held that, unlike in a jurisdictional dispute, Avery was not faced with irreconcilable obligations to two or more different unions (where damages would usually not be awarded); the damages here were owed to individual members of one union who performed work under the Civil Agreement rather than the ICI agreement, for lower compensation – Damages found owing; their calculation was remitted to the parties

AVERY CONSTRUCTION LIMITED; RE IUOE, LOCAL 793; RE OPERATING ENGINEERS EMPLOYERS BARGAINING AGENCY; RE LIUNA, LOCAL 1036; LIUNA, ONTARIO PROVINCIAL DISTRICT COUNCIL; RE PROVINCIAL EMPLOYER BARGAINING AGENCY – LABOURERS; OLRB File No. 0832-10-G and 1089-10-G; Dated November 27, 2012; Panel: Ian Anderson (10 Pages)

Certification – Construction Industry – Termination – The applicant sought certification pursuant to section 128.1 to represent the employer's bricklayers working on non-ICI projects – The employer was already bound to a collective agreement in the ICI sector with the applicant union – In early 2012, the employer entered into a collective agreement with the intervenor union with respect to non-ICI work – The applicant also sought to terminate the bargaining rights of the intervenor with the employer, pursuant to section 66 of the Act – The intervenor and the employer attempted to justify their voluntary collective agreement in three ways, none of which were persuasive to the Board – The Board did not accept that this was a valid "pre-hire" collective agreement, as the rationale behind such agreements is the employee's choice of bargaining agent and in the case at hand there was no such choice exercised by the employees to be represented by the intervenor – The Board did not accept that subsection 1(4) had any application to the operations of the employer – Finally, the fact that the employer was required to enter into a collective agreement with the intervenor in order to work on a non-ICI project did not render that collective agreement valid – The Board found that the institutional rights of the intervenor could not override the employees' statutory rights to choose their own bargaining agent – The Board exercised its discretion under section 66 of the Act to declare the collective agreement between the intervenor and the employer invalid – Termination application granted – Application for certification continues

BMC MASONRY, A DIVISION OF 2032686 ONTARIO LIMITED; RE BRICK AND ALLIED CRAFT UNION OF CANADA, RE LOCAL 2; RE UNIVERSAL WORKERS UNION, LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, LOCAL 183; OLRB File No. 0059-12-R and 0285-12-R; Dated November 1, 2012; Panel: David A. McKee (8 Pages)

Bargaining Unit – Certification – The City objected to an application for certification brought by CUPE Local 79 for a bargaining unit of security guards, arguing that a conflict of interest would result because the Local already represents numerous other of the City's employees – The Board considered the various categories of guards employed by the City and the history of their employment responsibilities with the City (post-amalgamation), and concluded that their main roles are to assist members of the public by giving directions or providing information, and to protect City property from outside threats; the security officers do not engage in monitoring of other employees to cause a conflict of interest – The Board also determined that the guards' role in labour disputes involving other bargaining unit members would not create a conflict of interest – A majority of the Board found, however, that the officers' (admittedly rare) role in investigating the conduct of other bargaining unit members, the relative lack of oversight of their investigations, and the seriousness of possible consequences of such investigations were sufficient to establish a potential conflict of interest – Application dismissed

CITY OF TORONTO; RE THE CANADIAN UNION OF PUBLIC EMPLOYEES LOCAL 79; RE TORONTO CIVIC EMPLOYEES' UNION, LOCAL 416; OLRB File No. 0623-07-R; Dated November 30, 2012; Panel: Brian McLean, J.A. Rundle and David Patterson (dissenting) (21 Pages)

Bargaining Unit – Certification – Construction Industry – LIUNA brought two applications to be certified as the bargaining agent for all construction labourers working for the employer in all non-ICI sectors in Board areas 26 and 27 – The Board found that three employees performed the work of construction labourers on the application date in both Board areas – The employer argued that those workers should be included in both bargaining units for the purpose of the two certification applications – LIUNA argued that those workers should only be included in one bargaining unit for the Board area in which they spent the "majority of time" on the application date - The Board rejected as impractical the application of the "majority of time test" in order to determine to which Board area bargaining unit an employee belonged on the application date – The Board also rejected the union's submission that an employee cannot belong to more than one bargaining unit in different geographical locations on the application date (although it did maintain that an employee can only belong to one *craft* bargaining unit in a particular geographic location on the application date) – If an employee works for an employer and performs, for a majority of time on the application date, the tasks associated with the applicant's craft unit in the geographic area covered by the application for certification, that employee is in the bargaining unit regardless of what else he or she may do outside the bargaining unit for the employer or anyone else – Accordingly, the Board found that the three workers who performed construction labourer's work in both Board areas on the application date were bargaining unit employees for the purpose of both applications – The Board area 27 application was dismissed since LIUNA filed membership information for less than 40% of the bargaining unit – The Board certified LIUNA for Board area 26, as more than 55% of the workers in the bargaining unit were members of constituent locals of the applicant at the time the application was filed – One application dismissed; the other granted

COUNTRY GREEN HOMES INC.; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB File No. 3299-09-R and 3301-09-R; Dated November 8, 2012; Panel: David A. McKee (29 Pages)

Certification – Construction Industry – Intervention – Reconsideration – CLAC was successful in an application for certification and an interim certificate for non-ICI bargaining rights in Board Area 29 was issued, pending the final resolution of the composition of the bargaining unit – LIUNA sought to intervene and request a reconsideration of the interim certificate, arguing that it had an earlier outstanding application before the Board for province-wide ICI representation and non-ICI rights in Board areas 15 and 31, whose outcome may affect the disposition of the CLAC application – The Board denied the intervention, finding that LIUNA had proper and timely notice of CLAC's application and failed to act on it within the time prescribed – The Board equally rejected the request for reconsideration, having found that the non-ICI employees of the employer working in Board area 29 could not be affected by the outcome of the earlier LIUNA application – Where disputes over one or more dimensions of the bargaining unit description cannot affect a trade union's entitlement to certification, s. 9(2) of the Act allows the union to begin to represent in

collective bargaining those employees in the unit over whom there is no dispute – Intervention and reconsideration dismissed

DALCON ENTERPRISES INC.; RE CHRISTIAN LABOUR ASSOCIATION OF CANADA; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL; OLRB File No. 1894-12-R; Dated November 5, 2012; Panel: Harry Freeman (9 Pages)

Construction Industry – Employee – Final Offer Vote – The Board was asked to determine who are the "employees in the affected bargaining unit" when the Minister directs a vote of an employer's last offer in the construction industry – Absent a direction from the Minister ("on the terms that he or she considers necessary"), the Board found no reason not to apply its clear, well-known, longstanding and well-established rule for representation questions: to be eligible to vote an employee must be at work in the bargaining unit on the date of application – No Labourers were at work; submissions directed with respect to four Operating Engineers – Matters continue

EKUM–SEKUM INCORPORATED O/A BRANTCO CONSTRUCTION; RE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL 793; RE LABOURERS' INTERNATIONAL UNION OF NORTH AMERICA, ONTARIO PROVINCIAL DISTRICT COUNCIL ON BEHALF OF LOCALS 1059, 837 AND 1081; OLRB File No. 3784-11-M, 3671-11-U and 3114-11-U; Dated November 7, 2012; Panel: Bernard Fishbein (11 Pages)

Interim Relief – Unfair Labour Practice – CLAC sought the reinstatement of the most senior part-time housekeeping employee and organizer of its campaign, arguing that the discharge had detrimentally affected its organizing efforts – The Board considered its earlier jurisprudence under the irreparable harm aspect of the interim relief provisions, finding that the Board had examined the "pace" of card collecting, the impact the discharge of a key organizer might have on employees' choices in a representation vote and evidence of employees' hesitance to "cooperate with and assist the union" in its interim relief litigation – The Board was satisfied that CLAC had provided evidence of all of these elements, and had established that the employer's declarations left enough unanswered questions about its knowledge of the union's campaign that it was reasonable for the Board to infer a causal connection between the discharge and the campaign – Reinstatement ordered

HALDIMAND WAR MEMORIAL HOSPITAL; RE GRAND RIVER VALLEY HEALTH CARE EMPLOYEES UNION, LOCAL 305 AFFILIATED WITH THE CHRISTIAN LABOUR ASSOCIATION OF CANADA; OLRB File No. 2277-12-U and 2313-12-M; Dated November 15, 2012; Panel: Mary Anne McKellar (11 Pages)

Construction Industry Grievance – The union grieved Hydro One's refusal to re-hire a journeyman electrician based on the worker's inability to communicate sufficiently in English – The Board held that management decisions to hire a worker (or not) that are based upon safety considerations including concerns about the ability of employees to communicate and understand instructions should be given deference, and held to a reasonableness standard – In this instance, the worker had previously worked (briefly) for Hydro One; when the interviewer determined that the worker was having difficulty understanding questions put to him, he contacted a manager who had been responsible for the employee's previous work area – The interviewer failed, however, to take further steps to inquire about the employee's earlier experience at Hydro, including his training experience or the impressions of others who had worked with him – The Board concluded that the employer had acted arbitrarily in failing to consider relevant information readily available to it – The Board did not order Hydro to hire or compensate the worker, however, because the union was unable to persuade the Board that, had Hydro made the appropriate inquiries, it would not have been unreasonable for Hydro to continue to have serious concerns about the worker's ability to understand instructions and communicate safely in the workplace – Grievance allowed; no damages awarded

HYDRO ONE INC.; RE CANADIAN UNION OF SKILLED WORKERS; OLRB File No. 0762-12-G; Dated November 22, 2012; Panel: Lyle Kanee (7 Pages)

Certification – Evidence – Practice and Procedure – Unfair Labour Practice – The Board directed the union to identify the employees that it alleged had been threatened or intimidated by the employer – The Board distinguished *Hillside Sod Ltd.*, where the Board declined to order the union to identify persons to whom impugned statements had been made, holding that their identity was not essential for the applicant union to prepare its case – In the present application, since the reverse onus provision in s. 96(5) applied to the employer, the only defence it would be able to mount would be a blanket denial of the statements made; any positive defence could only be made after the

employer's witness testified in chief and the employer learned the names of the allegedly threatened employees in the union's cross-examination of the employer's witness – Matter continues

IMPERIAL CHILLED JUICE INC.; RE UNITED FOOD AND COMMERCIAL WORKERS INTERNATIONAL UNION, LOCAL 175; OLRB File No. 1157-12-R and 0218-12-U; Dated November 13, 2012; Panel: Brian McLean, P. Lemay and D. Patterson (3 Pages)

Bargaining Rights – Termination – Voluntary Recognition – The Board was asked to rule on the validity of a voluntary recognition agreement entered into by the SEIU and SteriPro – The OWU applied to displace the SEIU in two bargaining units of employees at Humber River Regional Hospital – Before the Board issued its decisions certifying the OWU, the work of the bargaining units was transferred to SteriPro - The SEIU and SteriPro entered into a VRA, relying on the contracting out provision in the original collective agreement between SEIU and the Hospital – The Board found that there was no need for evidence of employee support to make the VRA valid: it was sufficient that, at the time the parties entered into the VRA, the SEIU was the legitimate bargaining agent for the employees, with language in its collective agreement that gave it a legal right to continue in that role with a new employer – Application to terminate bargaining rights dismissed – Related matters continue

STERIPRO CANADA LIMITED PARTNERSHIP; RE ONTARIO WORKERS' UNION; RE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 1 CANADA; RE HUMBER RIVER REGIONAL HOSPITAL; OLRB File No. 2833-11-R, 2834-11-R, 3285-11-M and 1191-12-R; Dated November 13, 2012; Panel: Patrick Kelly (9 Pages)

***Prima Facie* Motion – Related Employer** – ATU Locals 113 and 1587 commenced legal strikes against York BRT, Miller and First Student, all of whom were in contractual relations to provide transportation services to York Region – Renewal collective agreements were ratified with York BRT and Miller; the contract with First Student was cancelled – The Locals brought unfair labour practice complaints against all responding parties, as well as a related employer application involving York Region and York BRT – The responding parties brought a motion to dismiss the related employer allegation, arguing the Board would not grant the orders or remedies requested even if all the facts alleged were assumed to be true – The Locals submitted that York Region was the "ghost in the room" because of the control it exercises over the transportation suppliers; in effect, the Locals were seeking an "upstream" declaration that would extend the bargaining rights they had achieved with a subcontractor to the principal with which the subcontractor has a commercial relationship – The unions argued that any contract negotiation with the suppliers was frustrated because of the absence at the table of the "entity with the real economic power" – The Board considered the longstanding relationship among the parties, the repeated renewals of collective agreements (including the most recent agreements), existing jurisprudence, and the distinction between "bargaining rights" and "bargaining power," and granted the *prima facie* motion to dismiss the related employer application without a hearing – Application dismissed

THE REGIONAL MUNICIPALITY OF YORK; RE AMALGAMATED TRANSIT UNION, LOCAL 113; RE YORK BRT SERVICES L.P; RE UNITED FOOD & COMMERCIAL WORKERS, LOCAL 206; RE AMALGAMATED TRANSIT UNION, LOCAL 1587; OLRB File No. 3379-11-R, 3380-11-U and 3377-11-U; Dated November 15, 2012; Panel: James Hayes (12 Pages)

Court Proceedings

Judicial Review – Non-Construction Employer – The Court of Appeal dismissed an appeal of a Divisional Court decision upholding the Board's decision that found that Greater Essex continued to be a construction industry employer as long as it performed construction work for an unrelated person from whom it expected compensation

GREATER ESSEX COUNTY DISTRICT SCHOOL BOARD; RE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL 773; RE THE INTERNATIONAL UNIONS OF BRICKLAYERS AND ALLIED CRAFTSMEN, LOCAL 6; RE UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 552; RE THE INTERNATIONAL UNIONS OF PAINTERS AND ALLIED TRADES, LOCAL 1494; LABOURERS' INTERNATIONAL UNIONS OF NORTH AMERICA, LOCAL 625; RE ONTARIO LABOUR RELATIONS BOARD; OLRB File No. 1776-04-R, 1778-04-R, 1794-04-R, 1796-04-R and 1797-04-R (Court File No. 212/09) Dated November 20, 2012; Panel: O'Connor A.C.J.O., Simmons and Rouleau JJ.A. (3 pages)

The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Durval Terciera, et al Divisional Court No. 520/12	1475-11-U	Pending
Defence Contract Management Agency Americas (Canada) Divisional Court No. 513/12	0955-11-R	Pending
Bur-Met Construction Divisional Court No. DC-12-010 **Thunder Bay**	3893-11-R	Pending
Vito Tarantino Ltd. Divisional Court No. 363/12	0356-12-R	Pending
OSMWRC, et al Divisional Court No. 363/12	0784-05-G	Pending
2130869 Ontario Ltd. Divisional Court No. 359/12	3518-11-R and 3519-11-G	Pending
Albert Tsoi v. UNITE HERE Divisional Court No. 330/12	3908-09-U	Pending
Ontario Sheet Metal Workers' and Roofers' Conference, et al (Flynn) Divisional Court No. 325/12	2730-11-JD	Pending
IBEW, Local 894 Divisional Court No. 321/12	3174-09-U	Pending
EllisDon Corporation Divisional Court No. 310/12	0784-05-G	Pending
EllisDon Corporation Divisional Court No. 309/12	2076-10-R	Pending
Thomas Fuller Construction et al Divisional Court No. 12-1832 **Ottawa**	1056-11-R	Week of Jan 28/13
Hassan Hasna Divisional Court No. 83/12	3311-11-ES	Pending
Landmart Building Corp. Divisional Court No. DC 12-346JR **Hamilton**	2519-11-R	Pending
Total Mechanical Systems Divisional Court No. 17/12	4053-10-R	Pending
Aragon (Hockley) Development (Ontario) Corporation Divisional Court No. 595/11	2781-09-R	Pending
C.W. Smith Crane Services v. IUOE Local 793 Divisional Court No. 513/11	3894–09–G	January 18, 2013
Greater Essex County District S.B. Court of Appeal No. M41822	1004–08–M	Seeking leave
John McCredie v. OLRB et al Divisional Court No. 1890/11 **London**	1155–10–U	Pending
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 213/11	0816–10–U 0817–10–U	Pending
Dean Warren v. National Hockey League Divisional Court No. 587/10	2473–08–U	December 7, 2012
Greater Essex Catholic District S.B. Supreme Court No. 34992	3122–04–G	Seeking leave to SCC

Case name & Court File No.	Board File No.	Status
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 383/10	0290–08–U 0338–08–U	Pending
Independent Electricity System Operator v. Canadian Union of Skilled Workers, LIUNA et al Supreme Court No. 34915	3322–03–R 2118–04–R	Seeking leave to appeal to SCC
Pro Pipe Construction v. Norfab Metal and Machine Divisional Court No. 408/09	2574–04–R	Pending
Blue Mountain Resorts v. MOL Court of Appeal No. C54427	1048–07–HS 0255–08–HS	September 27, 2012 Heard, reserved
Roy Murad v. Les Aliments Mia Foods Divisional Court No. 291/09	1999–07–ES	Pending
Greater Essex County District School Board v. IBEW, Local 773 et al Court of Appeal No. C55503	1776–04–R et al	Dismissed
Dr. Peter A. Khaiter v. OLRB et al Divisional Court No. 431/08	4045–06–U et al	Pending

NOTICE TO THE COMMUNITY

Please be advised that the Ontario Labour Relations Board will neither schedule nor hold hearings between **December 24, 2012 and January 4, 2013** inclusive. Matters of an urgent nature, however, may be scheduled on an expedited basis as determined by the Board, during this period. Applications will be processed in the usual manner on the dates that the Board is open for business, including: December 24, 27, 28, and 31 2012 and January 2, 3 and 4 2013.

Please note the default dates and hearing schedule for s. 133 grievance referrals over the holiday season.

Thank you for your attention to the above. Please have a safe and very happy Holiday Season.

DATE REFERRAL FILED	HEARING DATE
December 10 , 2012	January 7, 2013
December 11	January 7
December 12	January 8
December 13	January 8
December 14	January 9
December 17	January 9
December 18	January 10
December 19	January 10
December 20	January 11
December 21	January 11
December 24	January 14
December 27	January 14
December 28	January 15
December 31	January 15
January 2, 2013	January 16
January 3	January 17
January 4	January 18

Peter Gallus
Director/Registrar

ONTARIO LABOUR RELATIONS BOARD
INFORMATION BULLETIN NO. 32

Resolving Disputes in Displacement and Termination Applications in the Construction Industry during the Construction Open Period

This Information Bulletin describes how the Board deals with disputes of any sort, including "status disputes," in the context of construction industry displacement and termination applications filed in the construction open period.

"Status disputes" typically involve a disagreement as to whether certain individuals:

- were employed by the Employer on the application date;
- performed bargaining unit work for a majority of their time on the application date;
- exercised managerial functions; or
- were dependent or independent contractors.

Status disputes arise when the parties cannot agree on the "voters list" or, where the employer gives notice to the Board under section 8.1 of the Act in a displacement application (employer's disagreement with applicant union's estimate of the number of employees in proposed bargaining unit), and the parties cannot agree on whether certain individuals should be on the "section 8.1 list."

Other disputes arise in a variety of ways and are set out in the response or subsequent correspondence of the parties. These can include the timeliness of the application, the proper identity of the employer, trade union status, the description of the bargaining unit, conflict with a subsisting collective agreement, and other issues.

This Bulletin outlines the Board's processes for resolving disputes in displacement and termination applications in the construction industry, for cases filed in the "open period". It does not describe the Board's procedures with respect to disputes in certification applications or in displacement or termination applications outside of the construction industry. Please refer to the applicable Information Bulletin for information on those procedures.

I. IDENTIFICATION OF LEGAL AND FACTUAL ISSUES IN DISPUTE

This process describes how the Board will make certain decisions, and the process by which the parties will put matters before the Board. Parties should note that the Board may at any time decide any question or issue raised by any party during the submissions process when it is appropriate to do so based on the material filed without further submissions from any party.

Issues Regarding the Representation Vote

Parties (including individual workers) are given **five days after the vote** (that is, normally seven days after the Board's decision directing the taking of the vote) in which to make any submissions they might wish to make in writing about the conduct of the vote.

Status Disputes

Where there is a dispute about whether certain individuals should or should not be on the voters' list and/or on the section 8.1 list, each party must identify in writing, no later than the conclusion of balloting on the day of the representation vote, those individuals whose inclusion on the list(s) it disputes. Disputes relating to individual voters must be raised with the Labour Relations Officer conducting the vote before the individual casts his/her ballot. Disputes that a party seeks to raise after the conclusion of the balloting will not be considered except with leave of the Board. In addition, in the interests of fairness and finality, parties cannot raise issues about the list(s) to which they have earlier agreed.

Both the party disputing the right of an individual to cast a ballot and parties who assert that the person should be entitled to cast a ballot shall make their submissions setting out all the facts and documents in support of their position. This also applies to any challenges made to the section 8.1 list. Such submissions must be filed with the Board, with a copy to all other parties, no later than **ten days after the vote** (normally 12 days after the Board's decision directing the taking of the vote). **The requirements on parties making submissions about disputes are significantly higher than in the normal course of certification applications, and the parties should pay particular attention to the requirements set out in the Board decision in which the representation vote is ordered**.

Because the Board expects that the party that asserts an individual did have the right to cast a ballot will do so on the basis of some knowledge, such parties must file submissions containing specific facts rather than conclusions or categories of challenges. Unparticularized or blanket pleadings will not be sufficient to meet the Board's requirements for particularity. If a party fails to set out sufficiently cogent and particularized facts, the Board may decline to hear oral evidence related to this dispute.

Any party wishing to file a response to the first set of submissions may do so within a further **seven days** (that is, 19 days after the Board's decision ordering the vote). The response must include all facts and documents in support of the party's position and must be delivered to the other parties and filed with the Board within that same **seven** day period (that is, 19 days after the Board's decision ordering the vote). Again, the parties should pay particular attention to the requirements set out in the Board decision in which submissions are ordered.

Other Issues

If there are issues other than status disputes that are raised in the application for certification, they must be fully pleaded **within ten days of the date of the representation vote** (normally 12 days after the Board's decision directing the taking of the vote). The submissions must include full particulars of the facts on which the party raising the issue(s) relies and full legal submissions on the issue(s).

Any party wishing to file a response to the other issue(s) raised may do so **within a further ten days** (that is, 22 days after the Board's decision ordering the vote). The response must include full particulars of the facts on which the party is relying, and full legal submissions on the issue(s).

Case Review

All material in the file will then be reviewed by a panel of the Board. **Since this is a displacement application the Board will hold parties to a higher standard of pleadings and particulars than it has previously done in such proceedings.** On a Case Review, the Board will be making a determination about the sufficiency of the parties' factual assertions. *The Board will determine whether or not a party has pled sufficient cogent facts about the disputed person or the circumstances that the Board concludes that it needs to hear the proposed evidence. It is not enough to speculate about where the party might find evidence; before the Board will entertain a dispute, a party must be able to demonstrate that it has present knowledge of evidence that is likely to be of significance in the dispute.* In the absence of such particulars, the Board may decide the dispute on the basis of the materials filed.

In conducting a Case Review where the applicant is unrepresented, the Board takes that fact into account. However, the Board will still require that applicants in termination applications, as well as any other party who raises an issue, demonstrate that they have pleaded sufficient cogent facts about the disputed persons that the Board is persuaded that there is a need for the parties to call evidence to prove those disputed facts. Once again the parties must pay particular attention to the requirements set out in the decision the Board issues in which the representation vote is ordered.

Where possible the Board may decide any issues or disputes, including and in particular status disputes, based solely on the written submissions and documentary evidence provided by the parties in advance of the scheduled Expedited Hearing.

II. MANDATORY DISCLOSURE OF DOCUMENTS

In the event that either party is not satisfied with the production furnished by the other party with respect to the status disputes or any other issues, each party must advise the other party within five days of the receipt of the other party's last submission, of all the documents it seeks to have produced. The other party is required to respond as fully and completely as possible **within five days of receiving the request**. If a party objects to

producing documents it must set out its reasons in writing and provide them to the other parties and the Board within that five-day time frame.

III. SETTLEMENT DISCUSSIONS

While the Board will no longer be conducting Regional Certification Meetings, mediation still remains a significant component of the Board's process and the parties are encouraged to avail themselves of that process whenever it appears that settlement of some or all of the issues is possible, by contacting the Manager of Field Services. A settlement meeting with a Labour Relations Officer may be scheduled where appropriate. If a party seeks the assistance of a Board Officer to pursue partial or complete settlement discussions, the Board will accommodate that request. The purpose of such a meeting is to attempt to resolve, or at least narrow, the issues in dispute between the parties. Scheduling of settlement discussions will be undertaken independent of the scheduling of the Expedited Hearing, but the Expedited Hearing will not be delayed to make the settlement discussions/meetings possible.

Documents disclosed to a Labour Relations Officer prior to, or during, settlement discussions are not considered to have been filed with the Board and do not become evidence before the Board until formally entered into evidence at the Expedited Hearing.

IV. EXPEDITED HEARING

An Expedited Hearing will be held in Toronto. Notice of the time and date of the Expedited Hearing will be sent with the Confirmation of Filing. It will generally be conducted by a panel of the Board **on the Thursday or Friday of the eighth week after the date of the Board's initial decision.**

There will be no Case Management Hearing. If the panel of the Board that reviews the file decides that there are issues to be litigated at an oral hearing, that panel will set out what issues are to be addressed on the first day of hearing and, if appropriate, the manner in which the hearing is to commence on that day. Parties are expected to attend the Expedited Hearing ready to proceed on the issues and in the manner identified by the case Review panel.

The party that asserts that an individual should be on the list or in the bargaining unit has the responsibility for ensuring that individual's attendance at the hearing, unless the Board orders otherwise.

The party that has the responsibility for ensuring an individual's attendance at the hearing will be responsible for calling that individual as a witness. There may be circumstances in which a party calling a witness is allowed to cross-examine that individual. The Board may itself question a witness.

If necessary, the panel at the Expedited Hearing will set further dates for the hearing of oral evidence and submissions. Parties and their counsel will be expected to bring their calendars and commit to further hearing dates at the Expedited Hearing.

IMPORTANT NOTE

EXPEDITED HEARINGS ARE OPEN TO THE PUBLIC UNLESS THE BOARD DECIDES THAT MATTERS INVOLVING PUBLIC SECURITY MAY BE DISCLOSED OR THAT DISCLOSURE OF FINANCIAL OR PERSONAL MATTERS WOULD BE DAMAGING TO ANY OF THE PARTIES OR WITNESSES. EXPEDITED HEARINGS ARE NOT RECORDED AND NO TRANSCRIPTS ARE PRODUCED.

THE BOARD ISSUES WRITTEN DECISIONS, WHICH MAY INCLUDE THE NAME AND PERSONAL INFORMATION ABOUT PERSONS APPEARING BEFORE IT. DECISIONS ARE AVAILABLE TO THE PUBLIC FROM A VARIETY OF SOURCES INCLUDING THE ONTARIO LABOUR RELATIONS BOARD REPORTS, THE ONTARIO WORKPLACE TRIBUNALS LIBRARY, AND OVER THE INTERNET AT www.canlii.org, A FREE LEGAL INFORMATION DATABASE. SOME SUMMARIES AND DECISIONS MAY BE FOUND ON THE BOARD'S WEBSITE AND RECENT DECISIONS OF INTEREST AT www.olrb.gov.on.ca.

IN ACCORDANCE WITH THE *ACCESSIBILITY FOR ONTARIANS WITH DISABILITIES ACT, 2005*, THE BOARD MAKES EVERY EFFORT TO ENSURE THAT ITS SERVICES ARE PROVIDED IN A MANNER THAT RESPECTS THE DIGNITY AND INDEPENDENCE OF PERSONS WITH DISABILITIES. PLEASE TELL THE BOARD IF YOU REQUIRE ANY ACCOMMODATION TO MEET YOUR INDIVIDUAL NEEDS.